STATE OF MICHIGAN

COURT OF APPEALS

BEVERLY LeMONS,

Plaintiff-Appellant,

v

GREENFIELD-LINCOLN INVESTMENTS, L.L.C. and DETROIT ELEVATOR COMPANY,

Defendants,

and

MILLAR ELEVATOR SERVICE COMPANY OF DELAWARE,

Defendant/Cross-Defendant,

and

FARBMAN GROUP, INC., FARBMAN MANAGEMENT GROUP OF MICHIGAN, INC., FARBMAN MANAGEMENT GROUP, INC., FARBMAN COMPANY and FARBMAN MANAGEMENT GROUP OF DETROIT, INC.,

Defendants/Cross-Plaintiffs-Appellees.

UNPUBLISHED
April 11, 2006

No. 259212
Oakland Circuit Court
LC No. 03-050448-NO

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants, Farbman Group, Inc., Farbman Management Group of Michigan, Inc., Farbman Management

Group, Inc., Farbman Company, and Farbman Management Group of Detroit, Inc. (Farbman).[1] We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when the doors of the elevator she was entering closed on her arm. On appeal, plaintiff argues that Farbman's conduct was the proximate cause of her injuries and that Farbman had notice that the elevator doors were malfunctioning. We disagree.

We review de novo the trial court's order granting summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when the moving party is entitled to judgment as a matter of law because there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing this motion, the Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

In order to state a negligence claim, a plaintiff must prove (1) that the defendant owed him or her a duty of care, (2) that the defendant breached that duty, (3) that the plaintiff was injured, and (4) that the defendant's breach caused the plaintiff's injuries. *Henry v Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). A premises possessor, such as Farbman, may be liable for injury resulting from an unsafe condition caused by its own active negligence or that of its employees or, if otherwise caused, where known to the possessor or where the condition is of such a character or has existed a sufficient length of time that the premises possessor should have knowledge of it. *Hampton v Waste Management of Michigan, Inc*, 236 Mich App 598, 604; 601 NW2d 172 (1999). In the present case, both causation and notice are at issue.

To establish causation, a plaintiff must show both cause in fact and legal (or proximate) cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Cause in fact requires that a plaintiff's injuries would not have arisen but for a defendant's negligent conduct. *Id*. at 163. Circumstantial evidence may prove cause in fact, but the "circumstantial proof must facilitate reasonable inferences of causation, not mere speculation." *Id*. at 164. Circumstantial evidence of causation is sufficient if the "jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred", even if other plausible theories have evidentiary support. *Wilson v Alpena County Rd Comm*, 263 Mich App 141, 150; 687 NW2d 380 (2004). However, "'[t]he mere possibility that a defendant's negligence may have been the cause, either theoretical or conjectural, of an accident is not sufficient to establish a causal link between the two.'" *Skinner, supra* at 165-166, quoting *Jordan v Whiting Corp*, 396 Mich 145, 151; 240 NW2d 468 (1976).

In this case, plaintiff failed to establish cause in fact. Although it is undisputed that plaintiff was injured when the elevator doors closed on her, plaintiff has not presented any

[1] Defendants Detroit Elevator Company and Millar Elevator Service Company of Delaware are not parties to this appeal.

evidence that the elevator door's malfunction was the result of negligence on the part of Farbman. Although plaintiff's coworker and witness, Janita Gay, speculated that the doors did not close correctly in the past because the door sensor did not function properly, plaintiff has submitted no proof of a sensor problem. Mere speculation concerning a possible cause of the malfunction is insufficient to create a fact question on the issue of causation. *Skinner*, *supra* at 165-166. Moreover, although the maintenance reports describe past mechanical problems with this elevator, the problems described were corrected by repairs and were different from the accident in question. Specifically, none of the maintenance issues described in the reports dealt with the doors closing on a passenger while entering or exiting the elevator.

Plaintiff also argues that Farbman had actual and constructive notice that the elevator was malfunctioning. To prove this point, plaintiff relies on evidence that Farbman attempted to repair the elevators and Gay's claim that the doors came close to hitting someone. This argument is without merit. As already noted, the problems referenced in the maintenance reports were different from the accident that injured plaintiff. Thus, there is no evidence that Farbman had actual notice that the doors might close on and injure a passenger.

For constructive notice to exist, an unsafe condition must have existed for a length of time sufficient for the premises owner to discover it. *Whitemore v Sears Roebuck & Co*, 89 Mich App 3, 8; 279 NW2d 318 (1979). Here, although Gay claimed that the sensor did not operate properly a couple of times when people entered the elevator, she never saw the doors hit anyone other than plaintiff. Also, even though plaintiff and Gay each noted they had overheard that others had experienced problems with an elevator, neither could specify whether there were any injuries, whether the problems were with the doors, or even if the elevator at issue was involved. Given that plaintiff has not proffered evidence that the problem she encountered with the elevator doors had previously ever occurred, it is impossible to conclude that the condition existed for a sufficient time to place Farbman on constructive notice. *Whitemore*, *supra* at 8. Therefore, viewing the evidence in the light most favorable to plaintiff, Farbman did not have actual or constructive notice.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio